

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 459 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL and  
MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BHOPATBHAI S NAYAK

Versus

STATE OF GUJARAT

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Appearance:

MR DEEPAK M SHAH for Petitioner

Mr S R Divetia, A.P.P. for Respondent No. 1

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CORAM : MR.JUSTICE J.M.PANCHAL and  
MR.JUSTICE M.H.KADRI

Date of decision: 06/04/99

ORAL JUDGMENT (Per. Kadri, J.)

The appellant, who is the original accused of Sessions Case No.89/90 has challenged the judgment and order dated June 29, 1991 rendered by the Addl.Sessions Judge, Panchmahals in Sessions Case No.89/90 whereby the appellant is convicted of offence punishable under Section 302 of Indian Penal Code and sentenced to undergo

Rigorous Imprisonment for life and fine of Rs.1000/-, in default, Rigorous Imprisonment for six months, and for the offence under section 324 of the Indian Penal Code, rigorous Imprisonment for one year and fine of Rs.300/-, in default, Rigorous Imprisonment for one month. The substantive sentences imposed on the appellant for both the offences were ordered to run concurrently.

2. One Sayababhai Mansingh Nayak (hereinafter referred to as 'the deceased') was residing in Village Devirampura, Taluka, Baria. The deceased had four wives namely; (1) Shobhli, (2) Rayali, (3) Kamti and (4) Kali. Shobhli had two sons-Bharat and Bhupat (appellant). Kamti had five sons - (1) Prabhatsing (2) Ganpatsing (3) Popatsing (4) Narbatsing and (5) Abheysing. The deceased had divided his agricultural lands between all his sons and all his sons were residing separately. On April 4, 1990, on the occasion of marriage in the house of Nansing Fatehsing, the deceased along with his two wives Rayali and Kali had gone to the house of Nansing. As per the customs prevailing in the community, there was beating of drums and dance in the house of Nansing Fatehsing. As the dinner was ready, Popatsing, who is son of the deceased asked the drummers to stop the dance and the beating of drums. The appellant picked up quarrel with Popatsing. The deceased intervened and gave two to three slaps to the appellant. The appellant got enraged and went to his house. The deceased along with his two wives was returning to his house. On the way to his house, when the deceased came near the house of the appellant, the appellant came out from his house with a paliya (small weapon like sickle without having curves on the blade) and gave blow with paliya on the neck as well as on shoulder of the deceased. Bai Rayali came to rescue the deceased and she was also given blows with paliya by the appellant on the various parts of her body. The blow which was given on the neck of the deceased by the appellant with paliya was so severe that there was profuse bleeding from the neck and the deceased died instantaneously. Bai Rayali also sustained serious injuries and she was taken to her home. In the meantime, Prabhatsing, another son of the deceased came to the place of the incident and informed the Sarpanch of the village, Rupsing Fatehsing, about the assault by the appellant on the deceased as well as on Bai Rayali. The Sarpanch prepared report on the basis of information given by Prabhatsing and Ganpatsing. On April 5, 1990 at about 12.15 a.m., Prabhatsing and Ganpatsing went to the police outpost of village Sagtala. At the said outpost, unarmed Head Constable Fatehsinh Kesrisinh recorded the complaint lodged by Prabhatsing and Ganpatsing. The

report prepared by the Sarpanch was also produced at the police outpost and P.S.I. Parmar was informed of the incident. He registered offence against the appellant and proceeded to the place of incident on April 5, 1990 at about 10 a.m. Inquest was held of the dead body of the deceased and the dead body was thereafter sent for postmortem to the Civil Hospital, Godhra. Dr. P R Bhatia performed autopsy on the body of the deceased on April 5, 1990 at about 4.45 p.m. Injured Bai Rayali was sent to Primary Health Centre, Dabhna village, where she was treated by Dr. M M Makwana. Investigating Officer, PSI Parmar drew panchnama of scene of the offence and recovered the blood stained cloth worn by the deceased and Bai Rayali. Sarpanch Rupsing Fatehsing produced the muddamal paliya which was seized under panchnama. The appellant was arrested on April 5, 1990 at about 2.30 p.m. PSI Parmar recorded statements of witnesses and sent the incriminating articles for analysis to the Forensic Science Laboratory. After receiving the report from the Forensic Science Laboratory and on completion of the investigation, PSI Parmar filed charge-sheet against the appellant for the offence punishable under section 302 and 324 of I.P.C. As the offence under section 302 of I.P.C. is exclusively triable by the Court of Sessions, the case was committed to Sessions Court Panchmahals at Godhra, where it came to be numbered as Sessions Case No.80/90.

2. The charge at Exh.2 was framed against the appellant by the learned Additional Sessions Judge, Panchmahals at Godhra for offence punishable under section 302 and 324 of I.P.C. The charge was read over to the appellant, who pleaded not guilty to the charge and claimed to be tried.

3. To prove the guilt against the appellant, prosecution examined; (1) Dr.P R Bhatia, PW 1 at Exh. 17, (2) Dr M M Makwana, PW 2 at Exh.18, (3) Bai Rayali Sayababhai PW 3 at Exh.19, (4) Prabhatsing Sayababhai, PW 4 at Exh.20, (5) Rupsing Fatehsing, PW 5 at Exh.22, (6) Siddiq Isuf Bakker, PW 6 at Exh.23, (7) Bai Kali Sayababhai, PW 7 at Exh.25, (8) Police Constable Karansinh Bakubhai, PW 8 at Exh.26, (9) Head Constable Fatehsinh Kesrisinh, PW 9 at Exh.27 and (10) PSI A R Parmar, PW 10 at Exh.30. The prosecution also produced documentary evidence such as Inquest Report at Exh.6, panchnama of scene of offence at Exh.7, panchnama of recovery of clothes at Exhs. 8 and 9, postmortem report at Exh.11, report of Forensic Science Laboratory at Exh.15, Map of scene offence at Exh.16, FIR at Exh.21 and panchnama of seizure of muddamal paliya at Exh.24 etc.

4. After completion of recording of evidence of the prosecution, the appellant was questioned by the learned Additional Sessions Judge and his statement came to be recorded under section 313 of the Criminal Procedure Code. In his further statement, the appellant stated that he had not committed any offence and was falsely involved in the present case because his step mother and step brothers were trying to grab his agricultural land. The appellant did not lead any evidence in support of his case in defence. On appreciation of the evidence led by the prosecution and after hearing the arguments of the learned Advocates of both the sides, the learned Addl. Sessions Judge came to the conclusion that the prosecution had proved beyond reasonable doubt that the appellant had inflicted severe blows on the neck of the deceased and had caused death of the deceased. The Trial Court held that evidence of eye witness Bai Rayali and Bai Kali were trustworthy and was fully corroborated by the medical evidence. The learned Additional Sessions Judge also concluded that at the earliest opportunity, the FIR at Exh.21 was lodged with the Sarpanch wherein name of the appellant was disclosed as the assailant. The learned Additional Sessions Judge came to the conclusion that the defence of the appellant that he was falsely involved in the case as his step mother and step brothers were trying to grab his agricultural land was not at all acceptable. At the end, the learned Additional Sessions Judge concluded that the prosecution has brought home guilt of the accused, and therefore, he is held guilty of having committed offence under Sections 302 and 324 of I.P.C. and sentenced to undergo Rigorous Imprisonment as stated in para 1 of this judgment which has given rise to filing of the present appeal.

5. Learned Advocate appearing for the appellant Mr Dipak M Shah, has taken us through the entire evidence on record and submitted that in the assault of the deceased and Bai Rayali, some other persons might have taken part and it was not possible for the appellant alone to cause injuries on both the persons namely; the deceased as well as Bai Rayali. The learned Advocate stressed that the incident had taken place in darkness and it was not possible for the witnesses to identify the appellant. It is claimed that due to strained relations between the family members and with a view to grabbing the agricultural land of the appellant, he was falsely involved in the present case. It is further submitted by the learned Advocate that even though there was profused bleeding from the injury caused to the deceased as well as on Bai Rayali, no blood was found from the place of

the incident and this casts serious doubt about the place of incident. It is further claimed by the learned Advocate for the appellant that the medical evidence suggests that the injuries caused on Bai Rayali were inflicted prior to six hours of her examination by Dr. M M Makwana on April 5, 1990 in the morning hours, which is contrary to the prosecution case that the incident had taken place on April 4, 1990 at about 6.30 hours. The learned Advocate, at the end, submitted that a false case was cooked up against the appellant, and therefore, the appeal should be allowed and the appellant should be set at liberty.

6. Mr S R Divetia, learned Addl.Public Prosecutor submitted that there are two eye witnesses to the incident, and one of them is the injured eye witness and as their evidence is fully trustworthy and is corroborated by the medical evidence, the conviction should be upheld by the Court. It is further submitted that after the incident, FIR was lodged before the Sarpanch wherein name of the appellant was disclosed as assailant of the deceased as well as Bai Rayali which shows involvement of appellant in the incident. The learned A.P.P. further submitted that the witnesses are closely related to the appellant, and therefore, they would not falsely involve the appellant in commissioning of the crime by sparing the real culprit. At the end, learned APP submitted that the prosecution, by leading oral and documentary evidence has proved beyond doubt that the appellant was the only person who had caused murder of the deceased and caused injuries to Bai Rayali, and therefore, the appeal should be dismissed.

7. The evidence of Dr. P R Bhatia at Exh.17 and the postmortem report at Exh.11 prove beyond reasonable doubt that the deceased was murdered. As per the postmortem report, the blow which was given with paliya on the neck of the deceased had caused serious injuries on the neck as a result of which carotid arteries were cut. Dr Bhatia also found one injury on the left shoulder of the deceased which was an incised injury. According to the opinion of Dr Bhatia, due to cutting of carotid arteries, there was profuse bleeding and non-supply of oxygen to the brain which had caused death of the deceased. He also opined that cutting of carotid arteries was sufficient in the ordinary course of nature to cause death. The muddamal paliya was shown to Dr Bhatia and he opined that the injuries which were found on the body of the deceased were possible with the said weapon.

8. The appellant had also given blows with paliya on

the body of the injured witness Bai Rayali. Bai Rayali was examined by Dr M M Makwana at Exh.18. Dr Makwana had issued certificate with regard to the injuries found on the body of Bai Rayali which is produced at Exh.10, which is extracted as under:

- wound over left scapular region, size 3"x1"x muscle depth,
- Incised wound over right scapular region, size 3"x1"x muscle depth,
- Incised wound over left below scapular region size 6"1"x muscle depth,
- Incised wound over left base of the Thumb size 1/2"x1/4"x muscle depth,
- Incised wound over below left elbow joint-size 1 1/2"x 1/4"x muscle depth.

According to the opinion of Dr Makwana, the injuries caused to Bai Rayali were serious in nature. Dr. Makwana, during his deposition was shown the muddamal article, paliya and he opined that the injuries which were found on the body of Bai Rayali were possible by the infliction of blow with the muddamal article paliya.

9. The appellant, after inflicting fatal blows on the deceased as well as on Bai Rayali, had gone to the house of Sarpanch of the Village namely; Rupsing Fatehsing at Exh.22. At the house of the Sarpanch, the appellant had produced muddamal paliya before him. The Sarpanch, in turn, had produced the muddamal paliya before the Investigating Officer and the said paliya was seized under panchnama vide Exh.24. The said muddamal paliya was bloodstained and on analysis, it was found that it contained human blood and the blood which was found on the muddamal weapon was of group 'A' which was the blood group of the deceased. This piece of evidence proves beyond doubt that the appellant was armed with muddamal paliya and had dealt fatal blows on the deceased. The evidence of injured eye witness Bai Rayali at Exh.19 corroborated by the evidence of another eye witness Bai Kali at Exh.25 prove beyond doubt that the appellant was armed with paliya and had dealt severe blows on the deceased as well as on Bai Rayali. The oral evidence of the eye witness is fully corroborated by medical evidence.

10. In view of the aforesaid discussion, we have no hesitation in coming to the conclusion that the appellant alone had inflicted fatal blows with muddamal paliya on the deceased as well as Bai Rayali. The appellant had selected vital part of the body of the deceased for inflicting the blow with paliya. The appellant knew that the infliction of blow with paliya on the neck of the deceased was so eminently dangerous that in all probability the blow would result into death. Causing of injury on neck of the deceased was intentional and medical evidence proves that the injury was sufficient in ordinary course of nature to cause death. Therefore, the finding of the learned Additional Sessions Judge that the appellant was guilty of offence of committing murder of the deceased is eminently just and legal and we hereby confirm it. The appellant had also inflicted blows with paliya which had caused serious injuries on the right and left shoulders as well as on the fingers of the hands of Bai Rayali. According to Dr. M M Makwana at Exh.18, these injuries were serious in nature and were possible by the blows given with the muddamal paliya. The oral evidence of both the eye witnesses viz; Bai Rayali-Exh.19 and Bai Kali-Exh.25 is corroborated by the medical evidence. Therefore, the finding of the learned Additional Sessions Judge that the appellant was guilty of the offence under Section 324 is also just and proper and we hereby confirm it.

11. The submission of the learned Advocate for the appellant that as it would not have been possible for the witnesses to identify the appellant and that the appellant was falsely involved because his step mother and step brothers were trying to grab his agricultural land is devoid of merit. The deceased had divided his agricultural lands between all his sons and all his sons were living separately and were cultivating the agricultural lands. The incident in question had taken place on April 4, 1990 between 6 p.m. and 7 p.m. In the month of April, usual time of sun set is after 7 p.m. The incident in question had taken place before 7 p.m., and therefore it cannot be said that there was darkness and it would not have been possible for the witnesses to identify the accused. It should not be lost sight of the fact that the appellant and the eye witnesses were closely related. The appellant was not an unknown person to the witnesses. The eye witnesses were searchingly cross-examined by the defence Counsel, but they had withstood the test of cross-examination and their version about the identity of the appellant was not shaken and they categorically deposed that they had identified the

appellant who was carrying the muddamal paliya and with the help of the muddamal paliya, the appellant had inflicted fatal blows on the deceased well as Bai Rayali. The fact that the appellant had gone to the house of the Sarpanch with the bloodstained muddamal paliya also corroborates that the appellant had caused murder of the deceased and caused injuries to Bai Rayali.

12. We do not find any merit in the submission of the learned Advocate for the appellant that because of strained relations between his step mother and step brothers, the appellant was falsely involved in the present case. The learned Additional Sessions Judge rightly held that even after the arrest of the appellant

the agricultural lands belonging to the appellant were lying uncultivated and neither the step mother nor the step brother of the appellant had tried to grab the lands. There is not an iota of evidence on the record of the case which indicates that the appellant was falsely involved in the present case, so that his lands can be grabbed by the relatives i.e. step mother and brothers.

13. Considering the oral as well as documentary evidence and the circumstances emerging from the record of the case, we are of the opinion that the learned Additional Sessions Judge has rightly held that the appellant is guilty of having committed the offence under Sections 302 and 324 of I.P.C. The sentences imposed on the appellant for the aforesaid offences are quite just and legal. We do not find any illegality being committed by the learned Additional Sessions Judge while holding the appellant guilty of the said offences and sentencing him to undergo Rigorous Imprisonment for life and imposition of fine of Rs.1,000/- for the offence punishable under section 302 of I.P.C. and Rigorous Imprisonment for one year and fine of Rs.300/- for the offence punishable under section 324 of I.P.C. We, therefore, uphold the conviction and sentence awarded by the learned Additional Sessions Judge, Panchmahals at Godhra, on the appellant.

14. As a result of the above discussion, the appeal fails and is dismissed. The muddamal articles shall be disposed of in terms of the directions given by the learned Additional Sessions Judge.

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msp.



